

**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF IOWA**

UNITED STATES OF AMERICA

Plaintiff,

v.

**THE STATE OF IOWA;
CHESTER CULVER, Governor
of the State of Iowa**

Defendants.

Civil No. 4:04-CV-00636-REL-RAW

NOTICE OF INFORMATION

COME NOW the Defendants and provide the following Notice to inform the Court of the status of consent decree activities at the Woodward Resource Center (WRC) and Glenwood Resource Center (GRC).

1. The consent decree, entered as an order of this Court in 2004, set forth a schedule for improvement on a comprehensive array of services at WRC and GRC. The consent decree contains 15 chapters, 13 chapters related to implementation goals and two related to introductory materials, and 228 individual provisions related to implementation goals. The consent decree was designed in a step-wise manner with staggered deadlines, intending incremental progress. The decree contemplated that each resource center would be in substantial compliance with the provisions by October, 2007, and that the resource centers would demonstrate sustained compliance for an eighteen-month period thereafter. The court's jurisdiction continues during this period of sustained compliance until April, 2009. The consent decree is the guiding document governing the work of Iowa and the Department of Justice (DOJ).

2. To assess compliance, DOJ conducts periodic in-person tours where it brings in expert consultants covering the many domains of services in the consent decree. DOJ offers technical assistance during these tours, and offers a formal opinion on whether or not Iowa has achieved compliance at a later time.

3. DOJ toured Woodward and Glenwood in September, 2007. On the basis of their findings in September, 2007, DOJ determined that WRC, although not in full compliance in all areas, had made sufficient progress toward substantial compliance to continue working under the existing consent decree. Also on the basis of their September, 2007 findings, DOJ determined that GRC had not made sufficient progress toward substantial compliance. Iowa did not contest these findings, and instead, continued to work collaboratively with DOJ, entering into a joint stipulation to extend the time for court's jurisdiction over GRC. This joint motion was filed with the Court on March 7, 2008. This joint motion did not simply extend the deadlines at issue. By extending the time frame of the consent decree for GRC, Iowa voluntarily agreed to one

additional year of oversight by both DOJ and this court. Glenwood submitted Plans of Correction according to the time frame set out in the Joint Motion. These Plans, as initially submitted to DOJ, were submitted to the Court on July 14, 2008. Updated Plans, reflecting progress made since the initial submission to DOJ, were submitted to the Court on August 7, 2008.

4. DOJ toured Glenwood Resource Center in May, 2008, and Woodward Resource Center in June, 2008. The compliance letters rating Iowa's progress toward substantial compliance were recently received, and are attached for the court's reference as Exhibits A-C.

5. DOJ completed a partial tour of Glenwood Resource Center the week of October 6th, 2008 covering the following areas: Psychology, Integrated Support Planning, Habilitation, and Communication. Certain of DOJ's expert consultants were unable to attend the tour due to family emergencies. DOJ plans to tour Glenwood Resource Center in November, reviewing the areas of Medical, Nursing, Physical and Nutritional Management, and Physical and Occupational Therapy. It also intends to tour WRC in November, reviewing the areas of physical and nutritional management, and physical and occupational therapy. Further, DOJ intends to return to both Glenwood and Woodward Resource Centers in January of 2009. These schedules are dependent on the availability of DOJ's expert consultants.

6. DOJ has not completed its most recent written assessment of Glenwood Resource Center related to the October 7-10, 2008 tour. The preliminary oral assessment based on a partial survey tour and initial document review indicates that Glenwood has made positive strides toward substantial compliance in the areas reviewed.

7. As the Court may be aware, ten residents of Glenwood Resource Center have passed away since January, 2008. The medical circumstances of each death are unique, and aside from the cause and manner of death, are confidential under Iowa law and HIPAA. Glenwood Resource Center serves a number of individuals who are medically fragile, as well as individuals in all adult stages of life. The State Resource Centers revised their existing mortality review policies and procedures in consultation with the Department of Justice. Each mortality review begins with an internal investigation; DOJ has acknowledged the Glenwood internal investigations are "exemplary." Mortality review includes review by an independent physician, and an interdisciplinary review. The SRCs report each death to the county medical examiner in the county in which the death occurred, pursuant to Iowa Code. The county medical examiner is vested, by law, with the authority to determine if the death affects the public interest, thus ordering an autopsy. Iowa Code § 331.802. In addition, the SRCs report each mortality to the Department of Inspections and Appeals and Iowa Protection and Advocacy. These agencies are empowered by statute to investigate potential abuse or violation of patient rights, and each agency makes its independent determination of whether to investigate in accordance with its statutory authority. DOJ will undertake its own review of the deaths in the November tour.

8. In addition to receiving technical assistance from DOJ's consultants, Iowa hired its own consultants in the areas of quality assurance systems, physical and nutritional management (PNM) assessment, physical and nutritional management systems, and nursing systems. In the

past year, the resource centers began consulting with the expert consultant in nursing systems and increased the frequency of PNM systems consultations to approximately monthly. Iowa made its expert consultant in PNM systems available to DOJ to answer questions on Iowa's PNM implementation progress and plan. GRC has new persons serving in key leadership positions such as the Administrator of Nursing, Medical Director, and PNM Core Team Lead. GRC created a new leadership position in the area of Speech Communication and is actively recruiting to fill that position. The former superintendent of GRC retired. An interim superintendent is serving during the search for a new superintendent. The Deputy Director of Field Operations is providing more intensive oversight during this period of transition. GRC restructured nursing to focus the profession as its own discipline. GRC contracted for three additional speech pathologists and reorganized those professionals into two teams, each with a specialty in either PNM or speech communication. New policies and procedures have been developed in medical, nursing, PNM, communication and psychology and existing policies and procedures have been refined and improved.

9. Certain deadlines are set forth in the consent decree and joint stipulation. The joint stipulation set forth a deadline of October 31, 2008 for Glenwood to achieve compliance. DOJ will complete its assessment of compliance following the November, 2008 tour. The parties are in agreement to continue to work cooperatively to achieve substantial compliance and resulting improved services for the residents of Glenwood and Woodward Resource Centers. The parties will continue to keep the court informed.

10. DOJ has reviewed and consents to this submission.

Respectfully submitted,

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Service via electronic mail to the following on October 30, 2008 by Gretchen Kraemer.

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